

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOHN A. FERRANTO,

Plaintiff(s)

-against-

DIANNE Y. TIONGSON-ATIENZA and LIBERTY  
HARLEY-DAVIDSON, L.L.C. a/k/a LIBERTY  
HARLEY-DAVIDSON/BUELL,

Defendant(s)  
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Index No. 07 CIV 5986(SCR)

**VERIFIED ANSWER**

**Defendants' Demand  
Trial by Jury**

Defendant LIBERTY HARLEY-DAVIDSON/BUELL, L.L.C., by its attorneys, FOGARTY,  
FELICIONE & DUFFY, P.C. answering the complaint herein:

**FIRST:** Denies knowledge or information sufficient to form a belief as to the truth  
of each and every allegation contained in paragraphs designated "1", "2", "4", "5", "6", "8", "9", "12",  
"13", "14", "17", "18", "19", "20", "21", "23", "24", and "25" of the complaint.

**SECOND:** Upon information and belief denies each and every allegation contained in  
paragraphs designated "3" except admits defendant LIBERTY HARLEY-DAVIDSON/ BUELL,  
L.L.C. is a foreign limited liability company incorporated and existing under the laws of the State  
of New Jersey, having its principal place of business in the State of New Jersey, at 12 West Milton  
Avenue, City of Rahway, and County of Union.

**THIRD:** Upon information and belief, denies each and every allegation contained in  
paragraphs designated "10", "11", "28", "29", "30", "42" and "43" except admits that LIBERTY  
HARLEY-DAVIDSON/BUELL, L.L.C. was the owner of the 2006 Harley-Davidson motorcycle,  
bearing the New Jersey license plate # P729W which it rented to Dianne Y. Tiongson-Atienza for  
her use with its permission and refers all questions of law to this Honorable Court.

**FOURTH:** Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs designated "16", "22", "32" and "36" of the complaint and refer all questions of law to this Honorable Court.

**FIFTH:** Upon information and belief, denies each and every allegation contained in paragraphs designated "26", "31", "33", "34", "35", "37", "38", "39", "40", "44", "45", "46", "47", "48", "49" and "50" of the complaint.

**SIXTH:** As to paragraph designated "15" of the complaint, defendant repeats, reiterates and realleges each and every denial heretofore made with respect to the allegations contained in paragraphs designated "1" through "14" inclusive of the complaint with the same force and effect as if here fully set forth

**SEVENTH:** As to paragraph designated "27" of the complaint, defendant repeats, reiterates and realleges each and every denial heretofore made with respect to the allegations contained in paragraphs designated "1" through "26" inclusive of the complaint with the same force and effect as if here fully set forth.

**EIGHTH:** As to paragraph designated "41" of the complaint, defendant repeats, reiterates and realleges each and every denial heretofore made with respect to the allegations contained in paragraphs designated "1" through "40" inclusive of the complaint with the same force and effect as if here fully set forth.

**AS AND FOR A FIRST SEPARATE AND DISTINCT  
AFFIRMATIVE DEFENSE, DEFENDANT,  
LIBERTY HARLEY-DAVIDSON/BUELL, L.L.C.  
ALLEGES UPON INFORMATION AND BELIEF:**

\_\_\_\_\_**NINTH:** Whatever damages the plaintiff may have sustained at the time and place mentioned in the complaint were caused in whole or in part by the culpable conduct of the plaintiff.

The amount of damages recovered, if any, shall therefore be diminished in the proportion to which the aforesaid culpable conduct attributable to plaintiff bears to the culpable conduct which caused the damages.

**AS AND FOR A SECOND SEPARATE AND DISTINCT  
AFFIRMATIVE DEFENSE, DEFENDANT,  
LIBERTY HARLEY-DAVIDSON/BUELL, L.L.C.  
ALLEGES UPON INFORMATION AND BELIEF:**

**TENTH:** Upon information and belief, any past or future costs or expenses incurred or to be incurred by the plaintiff for medical care, dental care, custodial care or rehabilitative services, loss of earnings or other economic loss, has been or will with reasonable certainty be replaced or indemnified in whole or in part from a collateral source as defined in § 4545(c) of the New York Civil Practice Law and Rules. If any damages are recoverable against the answering defendants, the amount of such damages shall be diminished by the amount of the funds which plaintiff has or shall receive from such collateral sources.

**AS AND FOR A CROSS-CLAIM AGAINST CODEFENDANT, DIANNE Y.  
TIONGSON-ATIENZA, DEFENDANT, LIBERTY HARLEY-DAVIDSON/BUELL,  
L.L.C. ALLEGES UPON INFORMATION AND BELIEF;**

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**ELEVENTH:** That if the plaintiff was caused to sustain damages or injuries other than as a result of his own culpability, and same was caused by the breach of contract, negligence or lack of care or responsibility on the part of codefendant, then this answering defendant demands judgement over in whole or in part against said codefendant for any breach of contract, negligence or responsibility on its part for which this defendant asks indemnity and/or contribution.

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**WHEREFORE**, the defendant, LIBERTY HARLEY-DAVIDSON/BUELL, L.L.C., demand judgment dismissing the complaint, together with the costs, disbursements, and expenses of this action, including attorneys fees.

Dated: Mineola, New York  
September 6, 2007

FOGARTY, FELICIONE & DUFFY, P.C.

By: \_\_\_\_\_  
Patrick J. Fogarty (3307)  
Attorneys for Defendant  
*LIBERTY HARLEY-DAVIDSON/BUELL, L.L.C.*  
185 Willis Avenue  
Mineola, New York 11501  
(516) 747-7500

TO: THE LAW FIRM OF WILLIAM G. SAYEGH, P.C.  
*Attorneys for the Plaintiff*  
65 Gleneida Avenue  
Carmel, New York 10512  
(845) 228-4200

WHITE, FLEISCHNER & FINO, LLP  
*Attorneys for the Defendant*  
*Dianne Y. Tionson-Atienza*  
140 Broadway  
New York NY 10005

VERIFICATION

STATE OF NEW YORK     )  
                                      :ss:  
COUNT OF NASSAU     )

I, the undersigned, am an attorney admitted to practice in the courts of New York State, and say that I am a member of the firm of FOGARTY, FELICIONE & DUFFY, P.C., the attorneys of record, for the defendant LIBERTY HARLEY-DAVIDSON/BUELL, L.L.C. I have read the Answer herein and the same is true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following: reports, investigation, etc. contained in the file maintained in your affirmant's office.

The reason I make this affirmation instead of defendant is because it is not located within the county wherein your affirmant maintains an office.

I affirm that the foregoing statements are true under the penalties of perjury.

Dated: Mineola, New York  
September 6, 2007

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PATRICK J. FOGARTY

# AFFIDAVIT OF SERVICE

STATE OF NEW YORK )  
 )  
 ) ss.:  
COUNTY OF NASSAU )

MURIEL OKROSY being sworn say: I am not a party to the within action, am over 18 years of age and reside at Floral Park, New York.

On September 10, 2007, I served a true copy of the annexed *Verified Answer* by mailing the same in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

TO: THE LAW FIRM OF WILLIAM G. SAYEGH, P.C.  
*Attorneys for the Plaintiff*  
65 Gleneida Avenue  
Carmel, New York 10512  
(845) 228-4200

WHITE, FLEISCHNER & FINO, LLP  
*Attorneys for the Defendant*  
*Dianne Y. Tiongson-Atienza*  
140 Broadway  
New York NY 10005

MURIEL OKROSY

Sworn to before me this  
September 10, 2007

Notary Public

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Plaintiff(s),

-against-

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LIBERTY HARLEY-DAVIDSON/BUELL,

Defendant(s),

---

***Verified Answer***

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**FOGARTY, FELICIONE & DUFFY, P.C.**

Attorneys for Defendant

*LIBERTY HARLEY-DAVIDSON/BUELL, L.L.C.*

185 Willis Avenue

Mineola, N.Y. 11501

516-747-7500

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To:

Attorney(s) for

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Service of a copy of the within

is hereby admitted.

Dated:

\_\_\_\_\_  
Attorney(s) for

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**PLEASE TAKE NOTICE**

*that the within is a (certified) true copy of a*

*entered in the office of the clerk of the within named Court on \_\_\_\_\_*

*Notice of*

*Entry*

*that an Order of which the within is a true copy will be presented for settlement to the Hon.*

*, one of the judges of the within named Court, at \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ M.*

\_\_\_\_\_  
*Notice of*

*Settlement*